

APPEAL NO. 032139
FILED SEPTEMBER 22, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 16, 2003. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first and second quarters.

The claimant appealed, contending that during the qualifying periods at issue, he met the good faith requirement based on a total inability to work in any capacity. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue is whether the claimant met the good faith effort to obtain employment commensurate with his ability requirement pursuant to Section 408.142(a)(4) and Rule 130.102(b)(2) by complying with the requirements of Rule 130.102(d)(4). The parties stipulated that the claimant sustained a "compensable disc herniation [at] L4-L5," and that the qualifying period for the first quarter was from September 21 through December 20, 2002, with the qualifying period for the second quarter being from December 21, 2002, through March 21, 2003. The hearing officer's determination that the claimant's unemployment was a direct result of his impairment has not been appealed.

The claimant seeks to show that he has made a good faith effort to obtain employment commensurate with his ability to work because he had a total inability to work. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the claimant "possessed some ability to work" and that the treating doctor's narrative report dated January 6, 2003, was conclusory and vague and "did not provide a detailed explanation of the reasons why Claimant was unable to perform even sedentary work during the qualifying periods at issue."

The claimant relies on the treating doctor's reports dated January 6, 2003, and April 4, 2003, as supplying the sufficient narratives. We have reviewed the reports in question and note that the operative paragraphs in both reports are strikingly similar and state:

Given the various physical, functional, and psychological issues that have yet to be resolved, [the claimant] is not able to return to any form of gainful employment at this time, or any time in the near future. Returning this patient back into the work force will in all probability increase, exacerbate, and may potentially cause him further injury. In summary, [the claimant's] injury precludes his ability to return to any type of work from 8/21/02 to the present. It is my opinion that [the claimant] may never be able to return to work because of disabling factors.

The hearing officer's determination that the doctor's narrative report is conclusory and vague in specifically explaining how the injury causes a total inability to work is supported by the evidence. We would further note that the Appeals Panel has held that generalized fears or the possibility of reinjury does not equate to a total inability to work. Texas Workers' Compensation Commission Appeal No. 970475, decided April 28, 1997, and Texas Workers' Compensation Commission Appeal No. 001199, decided July 11, 2000.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

CONCURRING OPINION:

The hearing officer as the finder of fact was not required to be persuaded by the treating doctor's opinion that the claimant had an inability to work. However, I write separately to make clear that I do not believe that the treating doctor's narrative was inadequate as a matter of law to establish an inability to work. Had the finder of fact found it persuasive and found an inability to work based upon it, I believe that such a finding would have been clearly affirmable.

Gary L. Kilgore
Appeals Judge